IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Amarjeet Vs. State of Rajasthan & Anr.
S.B. CR. REVISION PETITION NO.889/2005

Against order dated 21.09.2005 passed by Addl. Chief Judicial Magistrate, Sri Karanpur in Criminal Case No. 73/2005 - State Vs. Sukhdev Singh & Ors.

DATE OF ORDER :: 5th December, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. M.K. Garg for petitioner.
Mr. Vishnu Kachhawaha, Public Prosecutor.
Mr. S.S. Dhillon for complainant.

BY THE COURT:

Challenging the order dated 21.09.2005 passed by Addl. Chief Judicial Magistrate, Sri Karanpur in Criminal Case No. 73/2005 - State Vs. Sukhdev Singh & Ors., by filing the present revision petition under Sec.397/401 Cr.P.C., the petitioner seeks to set aside the impugned oder rejecting his application dated 10.02.2005 and taking

cognizance against him for the offence under Sec.302/34 IPC. Prayer is also made for sending his case for trial to the Juvenile Court.

It is altogether a different thing that the present petition has been filed by the name and on behalf of the accused petitioner, who as per his own case had not completed 18 years on 7.10.2005 i.e. the date on which the revision petitioner was filed as he claims himself to be born on 10.07.1988. However, without going into the technicalities, I proceed to decide the revision on its own merits.

Brief facts of the case are that an incident took place on 30.11.2004 in relation to water turn of the parties and in that occurrence the present petitioner Amar Singh and his father Sukhdev both gave kassi blows to Sukhraj Singh, who later on died. The police after registering a case filed challan in the Court against both of them. Thereafter. the present petitioner filed an application on 10.02.2005 before the learned ACJM, Sri Karanpur stating that he is minor and his date of birth is 10.07.1988, therefore he

being a juvenile cognizance against him may not be taken. The petitioner alongwith his application attached affidavit of his grand father Harjinder Singh, Certificate of District Level Athletics Games Competition and a ration card. The opposite party also filed some documents in relation to the age of the petitioner showing different date of birth. In such a situation, the Court sought medical report in respect of age of the petitioner and the Officer-in-charge of Primary Health Centre, Kesrisingh determined the age of accused petitioner as 20-22 years. In pursuance to the court's order, Medical Board after examination also determined the age of the accused petitioner and opined it to be 17 to 19 years. Concerned doctors were summoned for evidence and they appeared as witnesses. Considering the evidence led by parties, the learned trial Court rejected the application and took cognizance against the accused petitioner. Hence, this revision petition.

The contention of the learned counsel is that the Court below has committed severe illegality while not considering the accused petitioner a juvenile because it was amply proved by the evidence brought on record before the

trial Court that on the day of incident the accused petitioner was minor as he had not completed the age of 18 years on the day of incident. It has also been submitted that there was genuine certificate issued by the Head Master of Govt. Upper Primary School, Kaminpura produced in relation to the age of the accused petitioner and there was no reason why the Certificate (Praman Patra) was not considered sufficient to declare the accused as a juvenile, therefore, petitioner is not liable to be tried along with other co-accused. It has also been submitted that the affidavit of the grand father of the petitioner and ration card was also submitted showing the age of the petitioner on the day of incident below 18 years, therefore, the impugned order deserves to be quashed and set aside and the petitioner is required to be tried under the provisions of Juvenile Justice Act. In support of his contentions, the learned counsel has placed reliance on decisions rendered in Dinesh Vs. State of Rajasthan (S.B. Criminal Revision Petition No. 166/2006, decided on 18th October 2006 by this Court), Bhoop Ram Vs. State of U.P. (1989 SCC (Cri) 486, Jabra Ram Vs. State of Rajasthan (2005 (2) R.Cr.D. 342 (Raj.), and Ram Niwas Vs. State of Rajasthan (2006 (1) RCD 222 (Raj.).

On the other hand, the learned Public Prosecutor, assisted by learned counsel for the complainant argued that the learned trial Court has found the educational certificate submitted on behalf of the petitioner doubtful inasmuch as the educational certificate of the first institution obtained by the complainant and submitted before the Court had shown the age of the accused petitioner more than 18 years on the day of incident, therefore, it cannot be said that the findings of the learned trial Court in any manner require any interference by this Court under its revisional jurisdiction.

I have considered the submissions made before me and carefully perused the material available on record.

In the case of Dinesh (supra), this Court while considering the provisions of Juvenile Justice (Care & Protection of the Children) Act, 2000 (for short, hereinafter referred to as the 'Juvenile Act') has observed that plea of juvenile, available to a person, if not taken at the very early stage then also the plea being plea of law based on facts can be raised even at subsequent stage. In the above case, the parties led their evidence, the school teachers were

examined. The record maintained in the school was exhibited during the course of evidence and it was found that since the petitioner in the above case was a child within the meaning of Sec.2(k) of the Juvenile Act, the Court set aside the order of the trial Court and directed that the accused be tried under the provisions of the Juvenile Act.

In the case of Bhoop Ram, the Hon'ble Apex Court while considering the provisions of U.P. Children Act, 1951 considered the entries made in the school register and observed that in absence of anything showing that in the entries in the certificate did not relate to the accused or were incorrect, the same cannot be rejected on the basis of surmises. In the above case, the entries made in the certificate were given weight over the medical evidence.

In the case of Jabra Ram Vs. State of Rajasthan, it has been observed that the ration card and school record cannot be a substantive piece of evidence but the oral evidence as well as ossification test and the medical evidence brought before the Court was sufficient and best evidence to determine the age and the petitioner in the

above case was considered below 18 years on the date of incident.

In the case of Ram Niwas, the Court while considering the medical evidence and the oral evidence, in the facts and circumstances of the case, observed that since ossification test reveals an approximate age of the petitioner and according to Modi's Medical Juriprudence the age is generally plus or minus of two years from the medical opinion, hence the finding of the doctors that the petitioner is 18 to 19 years, leads to conclude that the petitioner would be about 16 years of age on the date of occurrence and the petitioner was treated as juvenile.

Having carefully gone through the principles laid down in the above authorities, there remains no doubt that provisions of Juvenile Act are mandatory in nature and as per the provisions of the Juvenile Act after enquiry if it is found that a person is juvenile then that person is liable to be tried under the provisions of the Juvenile Act.

The point for determination before me is as to whether on the day of incident the accused petitioner was juvenile or not?

In the instant case, an affidavit of the grand father of petitioner has been filed stating the date of birth of petitioner as 10.07.1988 and the certificate issued by the Head Master produced on behalf of the petitioner also certifies the date of birth as 10.07.1988 but the initial school certificate coupled with record in presence of Head Master was seen and assessed by the Court, which has been filed by the complainant showing the date of birth of accused petitioner as 10.07.1984. It is important to note that no scholar register or T.C. etc. have been produced to show that the Certificate (Praman Patra) issued by Head Master was based on properly maintained record. Nobody has come forward to state on oath regarding maintaining the register etc. of the school. Thus, as regards the certificate issued by Head Master, Kaminpura, Govt. Upper Primary School and the record submitted by the Head Master of Vikas Modern School are concerned, there is substantial variance, therefore, this creates a doubtful situation. The learned trial Court while considering the certificate submitted by petitioner and educational record, has opined that the Head Master of Vikas Modern School, Ganganagar was called alongwith the relevant record and

after examining the record it was found that in the scholar register at Serial No.361, entries in relation to the petitioner showed that the date of birth entered in the scholar register and other papers was 10.07.1984 and the boy was admitted in the school on 01.08.1987. The trial Court found that the entries were made in regular manner and there appeared no suspicion about the entries made in the school record. Therefore, this educational certificate of Vikas Modern School was considered to be relevant piece of evidence for determining the age giving precedence over the other certificate submitted on behalf of the accused petitioner because that was a certificate issued by a subsequent institution where it is alleged that the petitioner was got admitted but no T.C. etc. and other records were placed before the Court. The learned trial Court, therefore, after considering the above material found the educational certificate submitted by the complainant genuine. The trial Court further found that the two doctors examined viz., Dr. Vikramaditya Singh and Dr. J.C. Gupta stated the age of the accused petitioner respectively as 20-22 and 17-19 years. Deciding the application of the accused petitioner, the learned trial Court also took into consideration the evidence

led by the medical officers and referred to the cross examination of one of the above two medical officers viz., Dr. J.C. Gupta, who stated that lycrust of the pelvic bone appears at the age of 17 and it fuses at the age of 19 years and opined that since in the case of the petitioner the lycrust had started but it had not fused rather it was in the last stage of fusion or nearby fusion and as the bones of arm and ankle fuse at the age of 19 years, the age of accused at the time of examination was 18½ years, which was done after 3 months of the occurrence and therefore, the age of accused petitioner at the time of incident as per medical evidence was more than 18 years.

A careful perusal of the judgment of the lower court would show that the Magistrate has meticulously gone into the case of the petitioner claiming himself a juvenile and after ordering for medical examination of the petitioner, on the basis of reports and evidence led ultimately found that petitioner was not juvenile on the day of incident and while deciding the application of the petitioner discussed the material available on record at a great length and dismissing the application took cognizance against him.

In my humble opinion, the trial court, was justified in dismissing the application and taking cognizance against the petitioner and the impugned order does not suffer from any error, illegality or perversity which may warrant interference by this Court.

Since the revision petition lacks merits and this Court is not able to see any flaw, legal infirmity, inconsistency, error or perversity in the approach of the learned Magistrate below, the interference of this Court sought to be made in the revision petition does not merit acceptance and the only decision that could be arrived at by this Court is to dismiss the Revision Petition and the same is ordered accordingly.

In the result, this Revision Petition stands dismissed.

(**SATYA PRAKASH PATHAK**)**J**.

/jpa